

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

OKLAHOMA PROPERTY AND :
CASUALTY INSURANCE :
GUARANTY ASSOCIATION, :
Plaintiff :
: No.
v. :
: Filed electronically
UNIVERSAL HEALTH SERVICES, :
INC. and UHS OF DELAWARE, :
INC., :
Defendants :

**OKLAHOMA PROPERTY AND CASUALTY INSURANCE GUARANTY
ASSOCIATION'S OBJECTION TO AND MOTION TO QUASH IN PART
THE SUBPOENA SERVED ON STATUTORY LIQUIDATOR OF PHICO
INSURANCE COMPANY**

COMES NOW Plaintiff, the Oklahoma Property and Casualty Insurance
Guaranty Association (the "Association"), pursuant to Fed.R.Civ.P. 45(c)(3) and
(d)(2) and respectfully submits its objection to the Document Subpoena issued by
Universal Health Services, Inc. and UHS of Delaware, Inc. (collectively "UHS")
to the Statutory Liquidator of PHICO Insurance Company ("PHICO"). (See
Subpoena to Produce Documents, Information, or Objects, dated December 15,
2011, attached as Ex. "1").

The sole matter of contention between the parties regarding the December
15th Document Subpoena, is its command to produce a legal opinion drafted by

the Association's coverage counsel that was withheld from previous discovery under an express claim of attorney opinion work product privilege. (See Privilege Log, dated November 30, 2011, attached as Ex. "2"). In this regard, counsel for the parties have conferred, and agreed, to resolve the Association's claim of privilege as specifically outlined below:

Procedural History of the Case

1. This lawsuit involves a claim for statutory recoupment filed by the Association pursuant to the Oklahoma Property and Casualty Insurance Guaranty Act (the "Oklahoma Act"), Okla. Stat. tit. 36 § 2001 et seq., that is currently pending before the U.S. District Court for the Western District of Oklahoma (the "Western District"), case no. 10-CV-1402-D.

2. Both UHS and the Association have filed motions for summary judgment and extensive briefs regarding the legal issues involved in the case, which are currently pending before the Western District.

3. As noted above, on November 30, 2011 in response to UHS' direct request to the Association to produce a 2007 legal opinion drafted by the Association's counsel, counsel for the Association notified defense counsel that the requested opinion letter was privileged under the attorney opinion work product privilege. (See Ex. "2").

4. On December 15, 2011, UHS issued a subpoena to the Statutory Liquidator for PHICO commanding the production of, among other documents, “any memoranda or letters provided to PHICO by the Association that were authored by any counsel for the Association.” (See Ex. “1”, Attachment A, no. 3).

5. On December 29, 2011, counsel for UHS and the Association agreed to resolve the issue of the Association’s claim of attorney opinion work product as follows:

- a. The Association agrees not to object to the production of any non-privileged documents requested by UHS that are in the possession or control of the PHICO Liquidator;
- b. UHS agrees to excuse the PHICO Liquidator’s obligation to produce “any memoranda or letters provided to PHICO by the Association that were authored by any counsel for the association,” for which a claim of attorney/client or attorney opinion work product has been, or could be claimed, pending the resolution of the Association’s claim of privilege before the U.S. District Court for the Western District of Oklahoma;
- c. The parties’ agree to transfer of the Association’s Objection and Motion to Quash to the U.S. District Court for the Western District of Oklahoma for the determination of the Association’s claim of privilege; and
- d. The parties’ expressly agree that their agreement shall not otherwise prejudice their rights to enforce the December 15, 2011 Subpoena, or to seek a protective order in opposition thereto from the

U.S. District Court for the Western District of Oklahoma.

6. A copy of this Objection and Motion to Quash In Part were provided to Counsel for UHS by the Association's counsel prior to filing it with the Court.

REQUESTED RELIEF

Based on the parties' agreement of December 29, 2011, the Association requests that the Court issue an order in accordance with the parties' agreement, specifically: 1) Transferring the determination of the Association's Objection and Motion to Quash In Part, to the originating court, for determination; 2) Excusing the PHICO Liquidator's obligation to produce documents to which the Association claims privilege until a further determination by the U.S. District Court for the Western District of Oklahoma, the originating court; and 3) Preserving each party's rights to pursue compliance with, or the protection from, any remaining obligation by the PHICO Liquidator to the December 15, 2011 Subpoena with the originating court. A proposed order is attached hereto.

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CERTIFICATE OF SERVICE

I certify that the Oklahoma Property and Casualty Insurance Guaranty Association's Objection to and Motion to Quash in Part the Subpoena served on the Statutory Liquidator of the PHICO Insurance Company. this 29th day of December, 2011 by regular mail on the following:

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